



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0108]

RIN 1625-AA00

Safety Zone; Choctawhatchee Bay, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Choctawhatchee Bay where unexploded ordnances were discovered and a moving safety zone around vessels relocating any unexploded ordnance from Choctawhatchee Bay to the Gulf of Mexico. The safety zone is needed to protect mariners from the hazards associated with unexploded ordnance clearance operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Sector Mobile, or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 11:59 p.m. on February 28, 2024. For the purposes of enforcement, actual notice will be used from 1 p.m. on January 21, 2024, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0108 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LT Lawrence Schad, Waterways Management Division, U.S. Coast Guard; telephone 251-382-8653, email Sectormobilewaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
GICW	Gulf Intracoastal Waterway
USACE	U. S. Army Corps of Engineers

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. Immediate action is needed to protect people and property on the waterway from potential hazards associated with unexploded ordnance operations on the waterway and enhance public and maritime safety. The Coast Guard was unable to publish an NPRM due to the short time period between the discovery of the unexploded ordnances and the need for the Coast Guard to enforce a safety zone around unexploded ordnance clearance operations. The unexploded ordnances were discovered by the U. S. Army Corps of Engineers (USACE) on January 19, 2024. Specifically, two separate ordnances were discovered. The operations include detonating one of the ordnances where it is located and moving the other ordnance to an undetermined location in the Gulf of Mexico where the Coast Guard intends to establish a

new permanent zone as needed. Furthermore, delaying the effective date would be contrary to the safety zone's intended objectives of enhancing maritime safety and security while ensuring protection of people and property on the navigable waterway.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect life and property and mitigate potential maritime hazards involved with unexploded ordnance operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that a safety zone is necessary for the protection of persons and vessels from potential hazards associated with unexploded ordnance operations.

IV. Discussion of the Rule

This rule establishes a safety zone on certain navigable waters of the Choctawhatchee Bay within a 900 yard radius of approximate position 30°25'52.57314"N, 86°35'08.49867"W, and a moving safety zone within a 900 yard radius from any vessel involved with relocating the unexploded ordnance upon leaving the area where the ordnance was discovered until it is safely positioned in the disposal location. Enforcement of this safety zone is from 1 p.m. on January 21, 2024, until 11:59 p.m. on February 28, 2024. The duration of the zone is intended to protect personnel, vessels, and ensure maritime safety and security in these navigable waters during unexploded ordnance clearing operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB). This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone would be enforced for approximately six weeks and prohibit vessel movement on a portion of the Choctawhatchee Bay and a moving safety zone around relocating unexploded ordnances from the Choctawhatchee Bay to the Gulf of Mexico. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel

owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting six weeks that will prohibit entry on a portion of the Choctawhatchee Bay and a moving safety zone around a vessel involved in relocating any unexploded ordnance from the Choctawhatchee Bay to the Gulf of Mexico. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T08-0108 to read as follows:

§ 165.T08-0108 Safety Zone; Choctawhatchee Bay, FL.

(a) *Location.* The following area is a safety zone: All navigable waters of the Choctawhatchee Bay within a 900 yard radius of approximate position 30°25'52.57314"N, 86°35'08.49867"W, and a moving safety zone 900 yards around any vessel involved with relocating the unexploded ordnance upon leaving the area where the ordnance was discovered until it is safely positioned in the disposal location.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Sector Mobile Captain of the Port (COTP) in the enforcement of the safety zone.

- (c) *Regulations.* (1) Under the general safety zone regulations in subpart D of

this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. No person may anchor, dredge, or trawl in the safety zone unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative on VHF-CH 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 1 p.m. on January 21, 2024, through 11:59 p.m. on February 28, 2024. The enforcement period will be announced via marine broadcast, local notice to mariners, or by an on-scene oral notice as appropriate.

Dated: January 21, 2024.

U.S. Mullins,
Captain, U.S. Coast Guard,
Captain of the Port Sector Mobile.

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